

Introduced by Senator Ducheny

February 17, 2005

An act to amend Section 2081.7 of the Fish and Game Code, and to amend Section 7043 of, and to add Section 7046 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 387, as introduced, Ducheny. Salton Sea: New River.

(1) Existing law requires the Secretary of the Resources Agency, in consultation with the Department of Fish and Game, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. Existing law requires that the study establish an evaluation of, and suggested criteria for, selecting and evaluating alternatives, including, but not limited to, at least one most cost-effective, technically feasible, alternative.

This bill would require that the study establish a range of alternatives for the restoration, and would require that a most cost-effective technically feasible alternative be considered. The bill would delete that requirement that the evaluation include suggested criteria for selecting and evaluating alternatives.

(2) Existing law provides that specified law relating to the maintenance of flow in streams shall not prevent the use or enlargement of any natural channel for municipal purposes or for use in connection with any artificial system of drainage, irrigation, or flood control that does not cause the flow of water in the channel at the intake of the canal to be less than the quantity of water the owners and appropriators have the right to divert into the intake.

This bill would include sewage treatment and pollution prevention among those listed uses and would define the phrase “use or enlargement of any natural channel for municipal purposes” to include the encasement and piping of the New River through the City of Calexico to protect human health and the natural environment.

The bill would find and declare that the New River in Imperial County is an urban creek, as defined. The bill would authorize the City of Calexico to proceed in accordance with specified law with a comprehensive project for the cleanup, encasement and underground piping, and pollution treatment of the New River as it flows through that city, for the purposes of protecting human health and the environment.

The bill would make a finding and declaration of the Legislature regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2081.7 of the Fish and Game Code is
- 2 amended to read:
- 3 2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and
- 4 5515, and contingent upon the fulfillment of the conditions listed
- 5 in subdivisions (b), (c), and (d), the department may authorize,
- 6 under Chapter 1.5 (commencing with Section 2050) or Chapter
- 7 10 (commencing with Section 2800), the take of species resulting
- 8 from impacts attributable to the implementation of the
- 9 Quantification Settlement Agreement, as defined in subdivision
- 10 (a) of Section 1 of Chapter 617 of the Statutes of 2002, on all of
- 11 the following:
- 12 (1) The salinity, elevation, shoreline habitat, or water quality
- 13 of the Salton Sea.
- 14 (2) The quantity and quality of water flowing in the All
- 15 American Canal, the Coachella Canal, the Imperial Valley and
- 16 Coachella Valley drains, the New and Alamo Rivers, the
- 17 Coachella Valley Stormwater Channel, and the habitat sustained
- 18 by those flows.
- 19 (3) Agricultural lands in the Imperial Valley.

1 (4) The quantity and quality of water flowing in the Colorado
2 River, the habitat sustained by those flows, and the collection of
3 that water for delivery to authorized users.

4 (b) The Quantification Settlement Agreement is executed by
5 the appropriate parties on or before October 12, 2003.

6 (c) The department has determined that the appropriate
7 agreements have been executed to address environmental impacts
8 at the Salton Sea that include enforceable commitments requiring
9 all of the following:

10 (1) Imperial Irrigation District to transfer 800,000 acre-feet of
11 conserved water, by conservation methods selected by the
12 Imperial Irrigation District, to the Department of Water
13 Resources on a mutually agreed-upon schedule in exchange for
14 payment of one hundred seventy-five dollars (\$175) per
15 acre-foot. The price shall be adjusted for inflation on an annual
16 basis.

17 (2) Imperial Irrigation District to transfer up to 800,000
18 additional acre-feet of conserved water, by conservation methods
19 selected by the Imperial Irrigation District, to the Department of
20 Water Resources during the first 15 years of the Quantification
21 Settlement Agreement on the schedule established for the
22 mitigation water that was previously to be transferred to the San
23 Diego Water Authority, or on a mutually agreed-upon schedule,
24 at no cost for the water in addition to the payment for the water
25 from the mitigation fund described in paragraph (1) of
26 subdivision (b) of Section 3 of Chapter 613 of the Statutes of
27 2003.

28 (3) As a condition to acquisition of the water described in
29 paragraph (1), the Department of Water Resources shall be
30 responsible for any environmental impacts, including Salton Sea
31 salinity, related to use or transfer of that water. As a condition to
32 acquisition of the water described in paragraph (2), the
33 Department of Water Resources shall be responsible for
34 environmental impacts related to Salton Sea salinity that are
35 related to the use or transfer of that water.

36 (4) The Metropolitan Water District of Southern California
37 (MWD) to purchase up to 1.6 million acre-feet of the water
38 provided in accordance with paragraphs (1) and (2) from the
39 Department of Water Resources at a price of not less than two
40 hundred fifty dollars (\$250) per acre-foot on a mutually

1 agreed-upon schedule. The price shall be adjusted for inflation on
2 an annual basis. The Department of Water Resources shall
3 deposit all proceeds from the sale of water pursuant to this
4 paragraph, after deducting costs and reasonable administrative
5 expenses, into the Salton Sea Restoration Fund established in
6 Section 2932.

7 (5) The Metropolitan Water District of Southern California to
8 pay not less than twenty dollars (\$20) per acre-foot for all special
9 surplus water received by MWD as a result of reinstatement of
10 access to that water under the Interim Surplus Guidelines by the
11 United States Department of Interior subtracting any water
12 delivered to Arizona as a result of a shortage. The money shall be
13 paid into the Salton Sea Restoration Fund. The price shall be
14 adjusted for inflation on an annual basis. Metropolitan Water
15 District of Southern California shall receive a credit against
16 future mitigation obligations under the Lower Colorado River
17 Multi-Species Conservation Plan for any funds provided under
18 this paragraph to the extent that those funds are spent on projects
19 that contribute to the conservation or mitigation for species
20 identified in the Lower Colorado River Multi-Species
21 Conservation Plan and that are consistent with the preferred
22 alternative for Salton Sea restoration.

23 (6) Coachella Valley Water District, Imperial Irrigation
24 District, and San Diego County Water Authority to pay a total of
25 thirty million dollars (\$30,000,000) to the Salton Sea Restoration
26 Fund as provided in paragraph (2) of subdivision (b) of Section 3
27 of Chapter 613 of the Statutes of 2003.

28 (d) All of the following conditions are met:

29 (1) The requirements of subdivision (b) and (c) of Section
30 2081 are satisfied as to the species for which take is authorized.

31 (2) The take authorization provides for the development and
32 implementation, in cooperation with federal and state agencies,
33 of an adaptive management process for monitoring the
34 effectiveness of, and adjusting as necessary, the measures to
35 minimize and fully mitigate the impacts of the authorized take.
36 The adjusted measures are subject to Section 2052.1.

37 (3) The take authorization provides for the development and
38 implementation in cooperation with state and federal agencies of
39 an adaptive management process that substantially contributes to
40 the long-term conservation of the species for which take is

1 authorized. Preparation of the adaptive management program and
2 implementation of the program is the responsibility of the
3 department. The department's obligation to prepare and
4 implement the adaptive management program is conditioned
5 upon the availability of funds pursuant to the Water Security,
6 Clean Drinking Water, Coastal and Beach Protection Act of
7 2002, if it is approved by the voters at the statewide general
8 election to be held November 5, 2002 (Proposition 50), or other
9 funds that may be appropriated by the Legislature or approved by
10 the voters for that purpose. The failure to appropriate funds does
11 not relieve the applicant of the obligations of paragraphs (1) and
12 (2). However, the applicant shall not be required to fund any
13 program pursuant to this paragraph.

14 (4) The requirements of paragraph (1) may be satisfied if the
15 take is authorized under Chapter 10 (commencing with Section
16 2800).

17 (e) (1) The Secretary of the Resources Agency, in
18 consultation with the department, the Department of Water
19 Resources, the Salton Sea Authority, appropriate air quality
20 districts, and the Salton Sea Advisory Committee, shall
21 undertake a restoration study to determine a preferred alternative
22 for the restoration of the Salton Sea ecosystem and the protection
23 of wildlife dependent on that ecosystem. The Secretary of the
24 Resources Agency shall extend an invitation to the United States
25 Geological Survey Salton Sea Science Office to also participate
26 in the restoration study, and the office may participate if it
27 accepts the invitation. The restoration study shall be conducted
28 pursuant to a process with deadlines for release of the report and
29 programmatic environmental documents established by the
30 secretary, in consultation with the department, the Department of
31 Water Resources, the Salton Sea Authority, and the Salton Sea
32 Advisory Committee, and the United States Geological Survey
33 Salton Sea Science Office, if it is a participant. The secretary
34 shall use all available authority to enter into a memorandum of
35 understanding (MOU) with the Secretary of the Interior, as
36 provided in Section 101(b)(1)(B)(i) of the Salton Sea
37 Reclamation Act of 1998 (P.L. 105-372) for the purpose of
38 obtaining federal participation in the restoration of the Salton
39 Sea.

40 (2) The restoration study shall establish all of the following:

1 (A) ~~An evaluation~~ *A range* of alternatives for the restoration of
2 the Salton Sea ~~and the fish and wildlife dependent on it~~, that
3 includes consideration of strategies for salinity control, ~~habitation~~
4 *habitat* creation and restoration, and different shoreline
5 elevations and surface area configurations. *A most cost-effective*
6 *technically feasible alternative shall be considered.* The
7 alternatives shall consider the range of possible inflow
8 conditions. The ~~evaluation established pursuant to this~~
9 ~~subparagraph shall also include suggested criteria for selecting~~
10 ~~and evaluating alternatives shall be consistent with Chapter 13~~
11 ~~(commencing with Section 2930), including, but not limited to, at~~
12 ~~least one most cost-effective, technically feasible, alternative.~~

13 (B) An evaluation of the magnitude and practicability of costs
14 of construction, operation, and maintenance of each alternative
15 ~~evaluated.~~

16 (C) A recommended plan for the use or transfer of water
17 provided by paragraph (2) of subdivision (c). No water may be
18 transferred pursuant to that subdivision unless the secretary finds
19 that transfer is consistent with the preferred alternative for Salton
20 Sea restoration.

21 (D) The selection of a preferred alternative consistent with
22 Section 2931, including a proposed funding plan to implement
23 the preferred alternative. The proposed funding plan shall include
24 a determination of the moneys that are, or may be, available to
25 construct and operate the preferred project, including, but not
26 limited to, all of the following moneys:

27 (i) Moneys in the Salton Sea Restoration Fund established by
28 Section 2932.

29 (ii) State water and environmental bond moneys.

30 (iii) Federal authorizations and appropriations.

31 (iv) Moneys available through a Salton Sea Infrastructure
32 Financing District established pursuant to Section 53395.9 of the
33 Government Code and local assessments by the Salton Sea
34 Authority or its member agencies.

35 (v) Moneys derived from user or other fees.

36 (3) The study identifying the preferred alternative shall be
37 submitted to the Legislature on or before December 31, 2006.

38 (4) The Secretary of the Resources Agency shall establish an
39 advisory committee for purposes of this subdivision as follows:

1 (A) The advisory committee shall be selected to provide
2 balanced representation of the following interests:

- 3 (i) Agriculture.
- 4 (ii) Local governments.
- 5 (iii) Conservation groups.
- 6 (iv) Tribal governments.
- 7 (v) Recreational users.
- 8 (vi) Water agencies.
- 9 (vii) Air pollution control districts.
- 10 (viii) Geothermal energy development.

11 (B) Appropriate federal agency representatives may be asked
12 to serve in an ex officio capacity.

13 (C) The Resources Agency shall consult with the advisory
14 committee throughout all stages of the alternative selection
15 process.

16 (D) The advisory committee shall meet no fewer than six
17 times annually.

18 (E) The secretary shall appoint a vice chair of the advisory
19 committee from the committee membership. The vice chair shall
20 work with the secretary to develop advisory committee agendas
21 and to schedule meetings of the committee. The secretary and
22 vice chair shall appoint an agenda subcommittee to assist in the
23 preparation of advisory committee agendas.

24 (F) The advisory committee shall submit to the Resources
25 Agency recommendations to assist the agency in preparation of
26 its restoration plan. The Resources Agency shall develop a
27 schedule for the completion of these recommendations to ensure
28 that these recommendations will be considered by the agency in
29 a timely and meaningful manner as the restoration plan is
30 developed. These recommendations may include, but are not
31 limited to:

- 32 (i) The specific goals and objectives of the restoration plan.
- 33 (ii) The range of alternative restoration actions that must be
34 developed and analyzed.
- 35 (iii) The no action alternative.
- 36 (iv) The criteria for determining economic and technical
37 feasibility of the alternatives.
- 38 (v) The range of options for funding the restoration plan.
- 39 (vi) The selection of a preferred alternative for a restoration
40 plan.

1 (G) The Resources Agency shall periodically provide an
2 update to the advisory committee of the current work plan and
3 schedule for the development of the restoration plan.

4 (f) This section shall not be construed to exempt from any
5 other provision of law the Quantification Settlement Agreement
6 and the Agreement for Transfer of Conserved Water by and
7 between the Imperial Irrigation District and the San Diego
8 County Water Authority, dated April 29, 1998.

9 SEC. 2. Section 7043 of the Water Code is amended to read:

10 7043. (a) No act authorized in this chapter shall prevent the
11 use or enlargement of any natural channel for municipal purposes
12 or for use in connection with any artificial system of drainage,
13 irrigation, *sewage treatment and pollution prevention*, or flood
14 control ~~which~~ *that* does not cause the flow of water in the
15 channel at the intake of the canal to be less than the quantity of
16 water the owners and appropriators have the right to divert into
17 the intake.

18 (b) *As used in this section, “use or enlargement of any natural*
19 *channel for municipal purposes” shall include, but is not limited*
20 *to, the encasement and piping of the New River through the City*
21 *of Calexico to protect human health and the natural*
22 *environment.*

23 SEC. 3. Section 7046 is added to the Water Code, to read:

24 7046. (a) The Legislature finds and declares that the New
25 River in Imperial County is an urban creek as defined in
26 subdivision (e) of Section 7048.

27 (b) For the purposes of protecting human health and the
28 environment, the City of Calexico may proceed in accordance
29 with this code with a comprehensive project for the cleanup,
30 encasement and underground piping, and pollution treatment of
31 the New River as it flows through that city.

32 SEC. 4. The Legislature finds and declares that, because of
33 the unique circumstances applicable only to the City of Calexico
34 and the New River in Imperial County, a statute of general
35 applicability cannot be enacted within the meaning of
36 subdivision (b) of Section 16 of Article IV of the California
37 Constitution. Therefore, this special statute is necessary.